

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: <u>10/4/2022</u>

JOHN DOE,

Plaintiff,

20-CV-06393 (PAE) (VF)

-against-

ORDER

CITY OF NEW YORK and NEW YORK CITY
HEALTH AND HOSPITALS CORPORATION,

Defendants.

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CITY OF NEW YORK and NEW YORK CITY
HEALTH AND HOSPITALS CORPORATION,

Third-Party Plaintiffs,

-against-

AUGUST PHYSICAL THERAPY, P.C.,

Third-Party Defendant.

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VALERIE FIGUEREDO, United States Magistrate Judge:

On April 5, 2022, the Honorable Paul A. Engelmayer, U.S.D.J., referred this case to me for the purpose of addressing the pending motion for default judgment (ECF No. 56), submitted by Defendants/Third-Party Plaintiffs City of New York and New York Health and Hospitals Corporation, against Third-Party Defendant August Physical Therapy, P.C. Accordingly, it is hereby ORDERED that:

1. No later than November 7, 2022, Defendants/Third-Party Plaintiffs shall serve on Third-Party Defendant and file (with a courtesy copy to my Chambers) Proposed Findings of Fact and Conclusions of Law concerning the proposed amount of damages that should be awarded to

Defendants/Third-Party Plaintiffs upon the default of Third-Party Defendant (“Proposed Findings”). Defendants/Third-Party Plaintiffs shall include, with such service, a copy of this Order.

2. The Proposed Findings should specifically tie the proposed damages figure(s) to the legal claim(s) on which liability will be established; should demonstrate how Plaintiff has arrived at the proposed damages figure(s); and should be supported by a sworn affidavit, or a declaration under penalty of perjury, that attaches as exhibits and contains an explanation of any documentary evidence that helps establish the proposed damages.

3. Further, to the extent that Defendants/Third-Party Plaintiffs seeks attorneys’ fees and litigation costs, Defendants/Third-Party Plaintiffs submissions should:

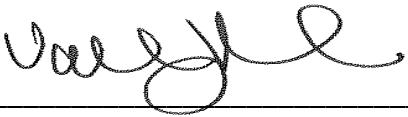
- a. provide copies of his attorneys’ contemporaneous time records, so that this Court may assess whether the requested fees are reasonable, see New York Ass’n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1148 (2d Cir. 1983);
- b. address the reasonableness of the hourly rates of the attorneys working on the matter and their support staff, see Arbor Hill Concerned Citizens Neighborhood Ass’n v. Cnty. of Albany, 522 F.3d 182, 190 (2d Cir. 2008); and
- c. provide copies of invoices or other documentation substantiating the amount of costs that have been incurred.

4. Third-Party Defendant shall submit a response, if any, to Defendants/Third-Party Plaintiffs submissions no later than December 7, 2022. Third-Party Defendant is cautioned that, as a corporate entity, it may not appear in this Court without an attorney, and therefore any response that it seeks to file, including any request for a hearing on damages, must be made through counsel for that response to be considered by the Court.

5. IF THIRD-PARTY DEFENDANT FAILS TO RESPOND BY DECEMBER 7, 2022, THEN THIS COURT WILL PROCEED TO ISSUE A REPORT AND RECOMMENDATION CONCERNING LIABILITY FOR THE ENTRY OF DEFAULT JUDGMENT AND DAMAGES ON THE BASIS OF DEFENDANT/THIRD-PARTY PLAINTIFF'S WRITTEN SUBMISSION ALONE. FURTHER, THIS COURT WILL NOT HOLD A HEARING ON DAMAGES, UNLESS THE THIRD-PARTY DEFENDANT REQUESTS A HEARING, IN WRITING, BY DECEMBER 7, 2022. See Action SA. v. Marc Rich & Co., 951 F.2d 504,508 (2d Cir. 1991) (Fed. R. Civ. P. 55(b)(2) "allows but does not require ... a hearing"); Fustok v. ContiCommodity Servs. Inc., 873 F.2d 38, 40 (2d Cir. 1989) ("[I]t [is] not necessary for the District Court to hold a hearing, as long as it ensured that there was a basis for the damages specified in a default judgment.").

SO ORDERED.

DATED: New York, New York
 October 4, 2022



VALERIE FIGUEREDO
United States Magistrate Judge

Copies to:

Plaintiff's counsel (via ECF)